

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PAULETTE R. ZANDER,

Plaintiff,

vs.

TROPICANA ENTERTAINMENT, INC.,
d/b/a TROPICANA ARUBA RESORT &
CASINO; DOES I through X; and ROES XI
through XX, inclusive,

Defendants.

Case No.: 2:13-cv-00848-GMN-PAL

ORDER

Pending before the Court is the Motion for Summary Judgment (ECF No. 38) filed by Defendant Tropicana Entertainment, Inc. (“Defendant”). Plaintiff Paulette R. Zander (“Plaintiff”) filed a Response (ECF No. 41).

I. BACKGROUND

This case arises from the injuries that Plaintiff experienced while visiting the Tropicana Aruba Resort and Casino (the “Resort”). (Am. Compl. ¶¶ 10–11, 15–16, ECF No. 34). Specifically, Plaintiff alleges that, while exiting her vehicle at the Resort, “she tripped and fell on a cement barrier that was placed parallel to the parking space.” (*Id.* ¶ 11). Plaintiff further contends that “[t]here was insufficient lighting after sundown . . . to distinguish [the cement barrier] . . . [and] [t]he barrier was not marked or painted to draw attention to the hazard.” (*Id.*). As a result, Plaintiff suffered “serious and permanent injuries,” (*Id.* ¶ 15), and was forced to incur medical costs for treatment and hospitalization, (*Id.* ¶ 16).

Thereafter, Plaintiff initiated this action in Nevada state court asserting three causes of action: (1) negligence; (2) *res ipsa loquitur*; and (3) breach of contract. (Compl. ¶¶ 19–38, ECF No. 1-1). Defendant later removed the action to this Court, (Notice of Removal, ECF No. 1),

1 and filed a Motion to Dismiss, asserting that Defendant does not, as the Complaint asserts,
2 “own[], occup[y], operate[], control[], manage[], [or] maintain[]” the Resort at which Plaintiff
3 experienced the alleged injuries. (Compl. ¶ 7; *see* Mot. to Dismiss 3:7–12, ECF No. 7).
4 Because Defendant’s argument relied on evidence outside Plaintiff’s Complaint to challenge
5 the facts alleged in the Complaint, the Court denied Defendant’s Motion to Dismiss. (Order,
6 ECF No. 16). However, the Court dismissed Plaintiff’s cause of action of *res ipsa loquitur* with
7 prejudice because “*res ipsa loquitur* is a theory of liability or a method of establishing liability
8 for negligence; it is not a separate cause of action.” (*Id.* 4:8–12). Discovery in this case closed
9 on June 17, 2015. (Scheduling Order, ECF No. 36). Shortly thereafter, Defendant filed the
10 instant Motion for Summary Judgment on all of Plaintiff’s claims. (Mot. Summ. J., ECF No.
11 38).

12 **II. LEGAL STANDARD**

13 The Federal Rules of Civil Procedure provide for summary adjudication when the
14 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
15 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
16 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
17 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
18 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable
19 jury to return a verdict for the nonmoving party. *See id.* “Summary judgment is inappropriate if
20 reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict
21 in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th
22 Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)). A
23 principal purpose of summary judgment is “to isolate and dispose of factually unsupported
24 claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

1 In determining summary judgment, a court applies a burden-shifting analysis. “When
2 the party moving for summary judgment would bear the burden of proof at trial, it must come
3 forward with evidence which would entitle it to a directed verdict if the evidence went
4 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
5 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
6 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted). In
7 contrast, when the nonmoving party bears the burden of proving the claim or defense, the
8 moving party can meet its burden in two ways: (1) by presenting evidence to negate an
9 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
10 party failed to make a showing sufficient to establish an element essential to that party’s case
11 on which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–
12 24. If the moving party fails to meet its initial burden, summary judgment must be denied and
13 the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*,
14 398 U.S. 144, 159–60 (1970).

15 If the moving party satisfies its initial burden, the burden then shifts to the opposing
16 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
17 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
18 the opposing party need not establish a material issue of fact conclusively in its favor. It is
19 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the
20 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
21 *Ass’n*, 809 F.2d 626, 631 (9th Cir. 1987). In other words, the nonmoving party cannot avoid
22 summary judgment by relying solely on conclusory allegations that are unsupported by factual
23 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go
24 beyond the assertions and allegations of the pleadings and set forth specific facts by producing
25 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

1 At summary judgment, a court's function is not to weigh the evidence and determine the
2 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
3 The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn
4 in his favor." *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is
5 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

6 **III. DISCUSSION**

7 Plaintiff maintains that the Resort is the alter ego of Defendant. (Am. Compl. ¶ 2).
8 Accordingly, Plaintiff's two remaining claims, negligence and breach of implied contract, are
9 dependent upon a finding of such alter ego liability. The alter ego doctrine is an exception to
10 Nevada's "general rule recognizing corporate independence." *Truck Ins. Exch. v. Palmer J.*
11 *Swanson, Inc.*, 189 P.3d 656, 660 (Nev. 2008). To establish alter ego liability:

12 (1) The corporation must be influenced and governed by the person
13 asserted to be its alter ego[;] (2)[t]here must be such unity of interest
14 and ownership that one is inseparable from the other; and (3)[t]he
15 facts must be such that adherence to the fiction of separate entity
would, under the circumstances, sanction a fraud or promote
injustice.

16 *Ecklund v. Nev. Wholesale Lumber Co.*, 562 P.2d 479, 479–80 (Nev. 1977). The party
17 seeking to establish alter ego liability must show each of these elements by a preponderance of
18 the evidence. *Id.* at 480. To evaluate whether there is a unity of interest, the Court considers
19 factors such as "commingling of funds, undercapitalization, unauthorized diversion of funds,
20 treatment of corporate assets as the individual's own, and failure to observe corporate
21 formalities." *Lorenz v. Beltio, Ltd.*, 963 P.2d 488, 497 (Nev. 1998). "No one of these factors
22 alone is determinative to apply the alter ego doctrine." *Id.*

23 Plaintiff premises her alter ego claim on two arguments. First, Plaintiff contends that
24 Defendant owns and operates the Resort. (Response 7:5–8). Plaintiff bases this assertion on a
25 2010 Form 10-K filing submitted by Defendant to the United States Securities and Exchange

1 Commission (“SEC”). In the filing, Defendant states as follows: “We are an owner and
2 operator of regional casino and entertainment properties located in the United States and one
3 casino resort development located on the island of Aruba.” (Ex. 1 to Response at 5, ECF No.
4 25-1). However, Plaintiff’s assertion that this statement demonstrates that Defendant owns and
5 operates the Resort is belied by another statement in the filing, which directly precedes the
6 previous statement and states as follows: “Unless the context indicates otherwise, or unless
7 specifically stated otherwise, references to ... ‘we’ ... refers to Tropicana Enterprises Inc. *and*
8 *its subsidiaries.*” (*Id.* (emphasis added)). Even still, “[a] mere showing that one corporation is
9 owned by another... is insufficient to support a finding of alter ego.” *Bonanza Hotel Gift Shop,*
10 *Inc. v. Bonanza No. 2*, 596 P.2d 227, 229 (Nev. 1979).

11 Second, Plaintiff argues that some of Defendant’s directors also served as directors of
12 the Resort. (Response 5:18–6:6, ECF No. 41). Specifically, Plaintiff explains that Daniel A.
13 Ninivaggi and Hunter C. Gary both served as directors or officers for Defendant and the Resort.
14 (*Id.*). However, “[a] mere showing that ... the two [companies] share interlocking officers or
15 directors is insufficient to support a finding of alter ego.” *Bonanza Hotel*, 596 P.2d at 229.

16 Moreover, Plaintiff fails to present any evidence that Defendant and the Resort
17 commingled funds, the Resort was undercapitalized, there was an unauthorized diversion of
18 funds, that Defendant and the Resort shared corporate assets, or failed to observe corporate
19 formalities. Therefore, the Court finds that Plaintiff has failed to provide admissible evidence
20 sufficient to raise a genuine issue of material fact as to whether the Resort was the alter ego of
21 Defendant. Accordingly, the Court finds Defendant has no alter ego liability for the Resort.
22 Furthermore, because no genuine issue of material fact exists as to Defendant’s alter ego
23 liability, Plaintiff’s remaining claims against Defendant also fail as a matter of law.
24
25


1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendant's Motion for Summary Judgment (ECF
3 No. 38) is **GRANTED**.

4 The Clerk of the Court shall enter judgment accordingly and close this case.

5 **DATED** this 17 day of February, 2016.

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Gloria M. Navarro, Chief Judge
United States District Judge